brass safety valve attached to the regulator to the outside of the building, to permit the gas which might proceed from the safety valve to escape to the outside atmosphere instead of remaining inside the building. Gas escaped through the safety valve, and the plaintiff, an employe of the Railroad Company, went into the shop to turn it off, when the explosion occurred. The jury found that the Gas Company had been negligent in not running a pipe from the safety valve up through the roof of the building, and as the direct cause of the explosion could not be attributed to any independent intervening agency, it was held that the original negligence of the Gas Company was the proximate cause of the injury. It appeared that the Railroad Company's employes had meddled with the apparatus, and had hammered the safety valve, which the jury found was negligence; but the real cause of the escape of the gas from the safety valve was left in doubt. The Gas Company was held liable.

"The duty being to take precautions, it is no excuse to say that the accident would not have happened unless some other agency than that of the defendant had intermeddled with the matter. A loaded gun will not go off unless some one pulls the trigger, a poison is inocuous unless some one takes it, gas may not explode unless it is mixed with air, and then a light is set to it. . . . On the other hand, if the proximate cause of the accident is not the negligence of the defendant, but the conscious act of another volition, then he will not be liable. For against such conscious act of volition no precaution can really avail."

G. H. B.

The Distinction Between a Partnership and a Joint Adventure.

It is difficult to determine the exact character of a joint adventure in this country, and to ascertain the distinction, if any, between it and a partnership. The recent case of *Jackson* v. *Hooper*[1] recognizes a clear distinction between the two, but helps very little to clear up the confusion. In this case the complainant and the defendant were engaged in the subscription-book business. They had obtained the copyright and trademark of the Encyclopedia Brittanica, and had formed several corporations for the purpose of selling the book. After thus en-

[1] 74 Atl. 130 (N. J.)

gaging in business for several years, the complainant brought a bill against the defendant for an account on the theory that they were partners. The court held that though the business was actually carried on by the two (the corporations being used merely as agents), yet there was no partnership, because on examination of the evidence, it appeared that there was no mutual agency between them. But the business was considered to be a joint adventure, and the bill for an account was allowed, the court being of opinion that the same rules of law applied to joint adventures as to partnership.

Joint adventures originated in Scotland. A joint adventure under the old Scottish law was regarded as a limited partnership, which might take place with unknown or dormant partners, or with partners who were known, but who used no firm or social name. It was limited to a single undertaking and differed from a partnership proper in that there was no firm, and the liability of one party for the engagements of another was fixed by the actual agreement between the parties.[2]

In England at the common law there seems to have been no true joint adventure, the Scottish joint adventure being regarded as within the principles of a partnership proper. The term "joint adventure" is applied to a contract where two jointly agree to buy goods with the intention of dividing the goods thus purchased;[3] but this is not analogous to the Scottish joint adventure, because there is no limited partnership at all in such a case. The goods purchased are merely to be divided; there is no purpose of reselling and dividing the profits.

In Germany at the present time there is an association analogous to the Scottish joint adventure, known as the non-mercantile partnership,—"an association of persons combining funds for a single joint transaction."[4] Some of the characteristics of the non-mercantile partnership are: (1) There is no right to have a firm name; (2) the property contributed by the partners does not belong to the partnership as such, but is vested in the partners as co-owners; (3) there is no implied authority in one member to act on behalf of the partnership.

In this country, like England, there seems no exact equivalent of the Scottish joint adventure. The cases are not very clear, and give practically no discussion on the question, but those which recognize the existence of such a relation seem to hold that the only difference between it and a partnership is

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[2] Bell's Commentaries on the Law of Scotland, Book 7, Chap. 3.

[3] *Hoare* v. *Dawes*, 1 Douglas 371; *Cooper* v. *Eyre*, 1 H. Bl. 37.

[4] E. J. Schuster, Principles of German Civil Law, page 51.

that a joint adventure is limited to a single undertaking;[5] although it may comprehend a business to be continued for a number of years.[6] On the other hand, many jurisdictions apparently do not recognize any distinction, but hold that a partnership may exist as to a single undertaking.[7] The only practical result of the distinction is that, since a joint adventure relates only to one undertaking, the accounts are simplified in many cases, and one party may sue the other at law for a breach of the contract or a share of the profits;[8] but this right will not preclude a suit in equity for an account,[9] as was held in our principal case.

Otherwise the law seems to be the same as in the case of partnership. In nearly all of the cases cited a firm name was used, which distinguishes the relation from the old Scottish joint adventure. Contracts made by one in pursuance of the venture are binding upon all jointly,[10] even though the agreement between the parties limited the liability of some of them to the capital contributed.[11] But in *Cooper* v. *Frierson*,[12] it was *held*, that one dealing with a party to a joint adventure was bound to acquaint himself with the terms of the agreement.

The principal case differs from the majority of the cases in this country in holding that there is no agency between the parties to a joint adventure. This would seem to be in accord with the old Scottish joint adventure, but the latter was a limited partnership in which there was no firm name, while in the principal case the parties used a firm name,—the name of the corporation; so that the cases are not analogous. The test used by the court,—that the presence or absence of mutual agency determines the relationship,—(partnership or joint adventure) —is unsound, because agency results from partnership, and

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[5] *Knapp* v. *Hanley*, 108 Mo. App. 353; *Wright* v. *Cumpsty*, 41 Pa. 102; *Finlay* v. *Stewart*, 56 Pa. 183. See also *Hambleton* v. *Rhind*, 84 Md. 456.

[6] *O'Hara* v. *Harman*, 14 N. Y. App. Div. 167; *Bradley* v. *Wolf*, 83 N. Y. Supp. 13.

[7] *Jones* v. *Davies*, 60 Kan. 309; *Spencer* v. *Jones*, 92 Tex. 516; *Two Hundred and Sixty Hogsheads of Molasses*, 24 Fed. Cases 14,296; *In re Warren*, 29 Fed. Cas. 17,191; *Flower* v. *Barnekoff*, 20 Ore. 132.

[8] *Hurley* v. *Walton*, 63 Ill. 260; *Wright* v. *Cumpsty*, 41 Pa. 102; *Finlay* v. *Stewart*, 56 Pa. 183; *Felbel* v. *Kahn*, 29 N. Y. App. Div. 270.

[9] *Marston* v. *Gould*, 69 N. Y. 220; *O'Hara* v. *Harman*, 14 N. Y. App. Div. 167.

[10] *Slater* v. *Clark*, 68 Ill. App. 433; *Derickson* v. *Whitney*, 72 Mass. 248; *Mission Ridge Land Co.* v. *Nixon*, 48 S. W. 405.

[11] *Benners* v. *Harrison*, 19 Barb. (N. Y.) 53. See also *Smith* v *Burton*, 59 Vt. 408.

[12] 48 Miss. 300.

not partnership from agency. Mutual agency is not a test of partnership, because the existence of such a relation is the very question in issue. For this reason the case is of little assistance in determining the exact character of a joint adventure. The question is not of great practical importance under the view apparently taken by the majority of the cases, because the only material distinction, as before-mentioned, is that an action at law by one party against the other will be allowed.

In closing, mention should be made of a peculiar kind of partnership in existence in this country, which, while not exactly analogous to the Scottish joint adventure, may be said to be in a class just below it. This is the mining partnership,—where two or more co-operate in working a mine. In such partnership, one partner cannot by contract bind the others except for supplies necessary for running the mine, and the burden is upon the party seeking to hold the firm to show that such partner had the actual authority to bind the firm.[13] It differs further from an ordinary partnership in that one may convey his share without dissolving the partnership,[14] and the death of one partner does not dissolve the firm.

R. S. H.

PAROL EVIDENCE INADMISSIBLE TO CONTRADICT IMPLICATIONS OF LAW FROM WRITTEN CONTRACT.

Defendant company had been purchasing certain boxes, cases, and bags from the plaintiff company for defendant's use in its business during the year 1905 under a written agreement dated July 25, 1905. While the contract was in force, to wit, September 1, 1905, plpaintiff addressed the following letter to the defendant:

"Gentlemen: We hereby agree to give you an option from one year from July 25, 1906, to furnish boxes at the same price as agreed upon in contract entered into between the Mutual Biscuit Co. and Standard Box Company. We furthermore agree to allow discount of 19½% off said prices, as present in said contract."

On July 25, 1906, the Mutual Biscuit Co. wrote the Standard Box Co.: "Gentlemen: In accordance with your contract letter of Sept. 1, 1905, we hereby accept the option therein, agreeing to purchase all of our boxes of you upon the same terms and prices as in previous contract, 19½% discount off. * * *"

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[13] *Kahn* v. *Smelting Co.*, 102 U. S. 641.

[14] *Skillman* v. *Lockman*, 23 Cal. 203.